

# Maryland Lawyer

News and analysis of legal matters in Maryland

## Tenant can't recover, despite \$100K verdict

BY CHRISTINA DORAN

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Despite a \$100,000 jury verdict in her favor, a tenant who claimed her landlord deceived her about water damage cannot recover because she filed her suit more than three years too late, the **Court of Appeals** has held.

"This decision is very significant to every Maryland consumer," said John Hermina of **Hermina Law Group**, counsel for the appellant. The court focused on "when the problems occurred as opposed to what the legislature had contemplated, which is when the injury or loss occurred," he said.

The outcome hinged on the tenant's timing: specifically, the date on which she knew or should have known about any unfair or deceptive trade practices by the landlord. On that date, the statute of limitations began to run.

"[This case] is precedent that in landlord/tenant relationship the continuation of events or the continuation of harm theory will not toll the statute of limitations, and

that the jury's finding of notice is going to continue to be given impressive weight by the court," said Michael B. Kelly of **O'Conor, Grant & Samuels**, who along with Herbert R. O'Conor III represented the landlord.

However, Hermina disagrees.

"The statute doesn't authorize you to go to court until you have suffered injury or loss," he said. He argued that the injury or loss did not occur until a few months before the lawsuit was filed, and therefore Linda MacBride should have been entitled to the \$100,000 in damages awarded to her by the jury.

### Suspicious odor

MacBride leased an apartment at the Little Brook Apartments in Frederick from Michael M. Pishvaian in October 1998. A brief run-through of the apartment didn't result in any misgivings about the condition of the apartment despite a few water spots on the ceiling and a "suspicious odor."

However, the condition of the apartment began to deteriorate when, during heavy rains, water would soak through the ceiling, walls and carpet. MacBride complained to management about the water damage, along with the presence of an unwelcome family of squirrels. According to Kelly, however, MacBride would not give Pishvaian access to the apartment to make the necessary repairs.

An inspection of the apartment by the city of Frederick in November 2004 uncovered mold, a squirrel's nest in the wall and other items in need of repair. According to Hermina, the city inspector ordered MacBride to vacate the premises that same day.

Two days later, MacBride was examined by a physician, who informed her that she suffered from mold exposure. She sued Pishvaian in December 2004, claiming unfair and deceptive trade practices, fraud, negligence, breach of contract and unjust enrichment.

After a three-day trial, the jury returned a verdict in MacBride's favor on the unfair and deceptive trade practices count.

However, MacBride's victory was

### What the court held

**Case:** *Linda MacBride v. Michael M. Pishvaian*, CA No. 42. September 2007. Reported. Opinion by Greene, J. Filed Dec. 13, 2007.

**Issue:** Does the continuation of events theory or the continuation of harm theory toll the statute of limitations in a consumer protection case involving unfair or deceptive trade practices by a landlord?

**Holding:** No. Because the tenant knew or should have known about the unfair or deceptive trade practices near or at the signing of the lease, neither theory tolls the statute of limitations, and her claim was untimely filed.

**Counsel:** John Hermina for appellant; Herbert R. O'Conor III and Michael B. Kelly for appellee.

**RecordFax:** 7-1213-22 (15 pages)



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*John Hermina*

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short-lived.

Frederick County Circuit Judge Julie S. Sholt entered a Judgment Not Withstanding the Verdict based on MacBride's failure to file suit within three years. The JNOV was based on the jury's finding MacBride "knew or should have known" about the practices on Oct. 28, 1998.

"Once the jury makes those findings of fact, the case law is very clear it is the judge's decision to apply those facts to the law," said Kelly.

### **No special circumstances**

MacBride appealed, arguing that by returning a verdict in her favor, the jury implicitly decided her lawsuit was timely. In the alternative, she argued that the time period for filing her suit should be tolled because of the "continuation of events" or the "continuing harm" theories.

"We felt that the correct analysis isn't when she knew or should have known but rather it is when the continuing violation stopped, keeping in mind the legislative intent," Hermina said. "This happened when she left the property and when she discovered she was exposed to mold."

The Court of Appeals disagreed, saying the jury was never asked to apply the statute of limitations to her claims.

Additionally, the continuation of events theory only applies when there is a fiduciary relationship between the parties, and "absent special circumstances to the contrary, the landlord-tenant relationship is a con-

tractual relationship."

"We hold that, as a matter of law, there are no specific facts in this case that would support a determination that the parties had a relationship built on trust and confidence such that appellant had a right to rely on appellee's good faith," wrote Judge Clayton Green Jr. on behalf of the unanimous top court.

"The court very clearly says in this opinion that the landlord/tenant relationship was not fiduciary relationship," said Kelly. "That is one of the things the court clears up in this opinion."

Even if such a relationship did exist, the court noted, because MacBride knew or should have known about the unfair and deceptive trade practices, the statute of limitations could not be tolled.

Nor does the continuing harm theory apply where, as in this case, the complaints "are merely 'continuing ill effects' from the original alleged violation." The only violation at issue occurred when MacBride signed the lease. Even if there were more violations, the court said, MacBride knew or should have known of the practices in 1998.

Hermina, though, feels the court got it wrong.

"Ms. MacBride's injury occurred within less than 30 days from when she filed her complaint in this case — well within the three-year period of the statute of limitations," said Hermina. "I hope that the next time this issue comes up that our wonderful high court will take that into consideration."

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## What's News—

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### **Brass Tack**

## How Hechinger Co., Known for Diversity, Ended Up in Bias Suits

### Black, Aging Employees Say Hardware Firm Pushed Them Out in Makeover

### John Senior's Worried Note

By LAURA BIRD

Staff Reporter of THE WALL STREET JOURNAL

Hechinger Co., the Washington hardware chain, had always been known for two things: high-quality goods at premium prices and progressive, family-friendly management that practiced equal opportunity long before such things were fashionable.

These days, after surviving a bruising turf battle with a giant discount-hardware rival, Hechinger still lays claim to a large part of its marketing niche. But its reputation for beneficent management is tarnished. The company, once run by a stalwart liberal Democrat and crony of Lyndon B. Johnson, now finds itself the object of lawsuits alleging age and race discrimination filed on behalf of scores of former employees. They claim they were fired or pressured to resign as part of a continuing restructuring.

### Changing Values

How Hechinger got into this position is a tale of social values colliding with economic realities; of a generational change in management style and philosophy as the son of the founder, John Hechinger Sr., passed the mantle of power to his own son, John Hechinger Jr.

Mr. Hechinger Sr., 74 and retired from active management since 1986, is still the company's chairman and a revered figure among employees; the 44-year-old Mr. Hechinger Jr., as architect of recent restructuring and cost-cutting moves, finds himself at the fulcrum of an employee storm over his management.

Yet his supporters argue that his hard-headed management style was just what the company needed to keep it viable in the face of stiffening competition. Detractors, however, paint the younger Mr. Hechinger as a man obsessed with the bottom line, and with little feeling for the company's older and minority employees, or its long tradition of workplace diversity.

The depth of animosity is clear when Marie Rollison, a 40-year-old black former manager at a Hechinger warehouse and one of the litigants, declares: "Hechinger used us to get where it wanted to go and then disposed of us like garbage."

Citing the pending litigation, Hechinger officials decline to discuss the terminations in detail. But John Hechinger Jr. says: "Hechinger has always prided itself on its good reputation in the community, and we think the actions here are totally without merit."

### Kinder, Gentler Past

Five years ago, no one who knew the company well would have contemplated the current controversy. The chain, founded 84 years ago, had become synonymous with hardware in the nation's capital. Its major growth had come after World War II as the federal bureaucracy mushroomed and throngs of government workers spilled into the surrounding suburbs to buy—and fix up—homes.

As the business that he had taken over from his own father prospered, the senior Mr. Hechinger rose in Washington society and in Democratic political circles; President Johnson appointed him chairman of the District of Columbia's first modern city council in 1967.

The company in a way was a reflection of Mr. Hechinger Sr.—a friendly man with a commitment to an integrated workplace. Even during the Depression, layoffs were rare, and well into the 1980s, turnover among store managers was minimal. People came to work at Hechinger and stayed; blacks and whites alike rose to become store managers and district supervisors. By the late 1980s, some were earning as much as \$90,000 annually, counting bonuses and stock options.

### Brave New World

Then, four years ago, Hechinger was drawn into a bruising battle for its very survival. The Home Depot Inc. chain of hardware superstores arrived on Hechinger's turf, an event that abruptly forced Hechinger into the modern era of retailing. Under Mr. Hechinger Jr., the company undertook a drastic overhaul, slashing jobs while converting almost half of the company's 72 old-line Hechinger stores into cavernous Home Project Center superstores with expanded merchandise and cheaper prices.

The junior Mr. Hechinger, the company's chief executive officer, points with pride to the results: a recovery of local market share lost after Home Depot came to town, a 20% increase in operating income and the elimination of \$40 million in overhead at the Hechinger division.

Yet while the financial restructuring was getting positive reviews from analysts, some employees say they were seeing a darker side: employees being pitted one against another, relegated to demeaning tasks or poor-performing stores and, eventually, being terminated or pressured to resign. Furthermore, the firings, some contend, seemed to be decimating the managerial ranks of Hechinger's over-40 and black employees. So last year, 49 of those former employees filed two discrimination complaints against the company in U.S. District Court in Greenbelt, Md., seeking a combined \$250 million in damages.

According to data compiled by the plaintiffs' attorneys, in 1990, five of Hechinger's 24 store managers in Maryland were black, and at least 11 were older than 40. By May 1993, the number of black managers had dwindled to zero and those over age 40 to five; by the end of that year, Maryland had one black manager and three over 40. Hechinger declines to comment on the plaintiffs' statistics or to provide its own.